



Final Review of Law Change Opinion
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BY 

**OPINIONS OF THE ATTORNEY GENERAL
OF THE OSAGE NATION
ONAG-2019-02¹**

QUESTIONS SUBMITTED BY: The Honorable Geoffrey M. Standing Bear, Principal Chief of the Osage Nation.

This Office has received your request for an Official Attorney General opinion regarding approval of policies and procedures by the Osage Nation Congress.

To which you ask:

In light of the ruling in *Standing Bear v. Pratt*, is the requirement of having the financial and accounting policies being subject to review and approval by the Osage Nation Congress in fact, unconstitutional and void?

I. SHORT ANSWER

Yes. In *Standing Bear v. Pratt* (SCO-2016-01), while referring to the Budget Parameter and Limitations Act, the Supreme Court ruled that there is no Constitutional provision permitting Congress to exercise approval power over the policies and procedures of *any* Executive Branch department and any such provision constitutes a violation of the separation of powers provision of the Constitution. Therefore, the same Congressional approval proviso over the financial policies and procedures contained in the Department of the Treasury Act, which the Treasury is an

¹ NOTICE: This opinion is subject to formal revision before official publication. Readers are requested to notify the Office of the Attorney General using the header information, or at AttorneyGeneralOffice@osagenation-nsn.gov, of any typographical or other formal errors, so that corrections may be made prior to official publication.

Executive Branch department, is unconstitutional and void.

II. DISCUSSION

The Constitution at Art. VII, § 13 and the Treasury Law at 15 ONC § 2-303 creates the Department of the Treasury and establishes it as a Department of the Executive Branch. The Treasury Law at 15 ONC § 2-319(A), states, in pertinent part, “The Treasurer shall develop financial and accounting policies for the Osage Nation. The proposed financial and accounting policies shall be subject to review and approval by the Osage Nation Congress.” (emphasis added). On September 14, 2012, the Treasurer filed the original financial management policy to Congress and Congress approved the policy on October 1, 2012 by resolution number ONCR 12-25. On July 18, 2019, the Treasurer filed the current Accounting Fiscal Management Policy with Congress and Congress approved the amendments to the policy on July 19, 2016 by resolution number ONCR 16-33. You question the constitutionality of the need for Congressional approval over the Department of the Treasury’s financial and accounting policies.

On August 11, 2017, the Supreme Court issued its opinion in *Standing Bear v. Pratt* (SCO-2016-01) and held Congressional approval over policies and procedures of the Human Resources Department and Executive Branch Departments is not a constitutionally permissible exercise of Congress’ legislative authority. *Pratt* at 25. The Supreme Court said, “The phrase ‘and policies and procedures approved by the Osage Nation Congress’ constitutes an improper interference with the Executive’s constitutional powers.” *Id.* The Court referred to a provision in the Budget Parameter and Limitations Act requiring Congressional approval over the policies and procedures of the Human Resource Department, which is an Executive Branch Department.

You are asking about the same Congressional approval provision over policies and procedures of another Executive Branch Department, the Department of the Treasury. The Supreme Court opined there is “no constitutional provision that would permit Congress to exercise the power to approve or disapprove the policies and procedures of *any* Executive Branch department.” *Id.* (emphasis added). Applying the Supreme Court’s holding in *Pratt*, it is my opinion that the same provision in the Treasury Law mandating Congressional approval over the Department of the Treasury’s financial and accounting policies and procedures is also unconstitutional and void.

III. CONCLUSION

It is, therefore, the official opinion of the Attorney General, that:

The Supreme Court in *Pratt* declared Congressional approval over policies and procedures of any Executive Branch department an improper interference with the Executive Branch's power. Since the Treasury Department is a Department of the Executive Branch, the provision in section 2-319(A) of the Treasury Law requiring Congressional approval of the financial and accounting policies is an impermissible exercise of the Congress' legislative authority, and therefore is unconstitutional and void.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Clint Patterson", written over a horizontal line.

Clint Patterson,
1st Asst. Attorney General